Supreme Court, U.S.
FILED
AUG 17 1999
OFFICE OF THE CLERK

No. 99-132

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

JOANNE ARMSTRONG ALLNUTT,

Petitioner,

v.

ASSOCIATES LEASING, INCORPORATED,
MILLER & MILLER AUCTIONEERS, INCORPORATED,
URBAN N. ZINK CONTRACTORS, INCORPORATED,
MARK J. FRIEDMAN, CHAPTER 11 TRUSTEE,
CHARLES J. MILLER, INCORPORATED,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENT MARK J. FRIEDMAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Of Counsel:

Mark J. Friedman
Maria Ellena Chavez-Ruark
Piper & Marbury L.L.P.
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530

Counsel of Record:

William Roger Truitt
Piper & Marbury L.L.P.
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530
Counsel for Respondent

QUESTIONS PRESENTED FOR REVIEW

1. Does the Petition for Writ of Certiorari (the "Petition") set forth "compelling reasons" as described in Supreme Court Rule 10 to warrant issuance of a writ of certiorari, i.e., does the Petition set forth a conflict among courts of appeals, an important federal question, a departure from the accepted and usual course of judicial proceedings or an important question of federal law?

2. Are the issues raised in the Petition moot when (i) the only interest Tracy E. Mulligan ("Mulligan") "pretending to act as petitioner" has in this case is that monetary sanctions were imposed against him and Joanne Armstrong Allnutt ("Joanne Allnutt"), the sole original plaintiff, jointly and severally, and (ii) the monetary sanctions were satisfied by Joanne Allnutt, who explicitly does not join in this appeal?

3. Does Mulligan have standing "pretending to act as petitioner" to petition this Court for review of an award of sanctions when (i) the only interest Mulligan has in this case is that monetary sanctions were imposed against him and Joanne Allnutt, the sole original plaintiff, jointly and severally, and (ii) the monetary sanctions were satisfied by Joanne Allnutt, who explicitly does not join in this appeal?

4. Does Mulligan have standing to (i) assert claims on behalf of Joanne Allnutt, his client, even though she undisputedly advised him not to petition this Court for review, or (ii) seek review of the sanctions imposed against Mulligan and Joanne Allnutt, jointly and severally, when the monetary sanctions were satisfied by Joanne Allnutt?

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES v

OPINIONS AND ORDERS BELOW vii

JURISDICTION 1

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND RULES 1

COUNTERSTATEMENT OF THE CASE AND FACTS 2

ARGUMENT 7

I. The Petition for Writ of Certiorari Does Not Set Forth "Compelling Reasons" to Warrant Issuance of a Writ of Certiorari 8

II. The Sanctions Award Is Moot Because It Has Been Satisfied 12

III. Mulligan Does Not Have Standing to Petition This Court for Review 15

A. Mulligan Does Not Have Standing to Petition This Court for Review of an Award of Sanctions that Has Already Been Paid by Joanne Allnutt 15

B. Mulligan Does Not Have Standing to Assert Claims on Behalf of Joanne Allnutt Because She Undisputedly Advised Him Not to Petition This Court for Review.....16

IV. The Petition is Frivolous and Wholly Without Merit and Therefore Damages and Costs Should be Awarded to the Trustee.....18

CONCLUSION.....22

APPENDIX.....Resp. App. 1

TABLE OF AUTHORITIES

CASES

Graver Mfg. Co. v. Linde Co., 336 U.S. 271 (1949) 11

Kapco Mfg. Co., Inc. v. C&O Enter., Inc.,
886 F.2d 1485 (7th Cir. 1989) 17

Sosna v. Iowa, 419 U.S. 393 (1975) 13

Spencer v. Kemna, 523 U.S. 1 (1998) 13, 14

Trans World Airlines, Inc. v. Thurston,
469 U.S. 111 (1985) 16, 17

United States v. Johnston, 268 U.S. 220 (1925) 11

Verret v. Oil Transport Co., 365 U.S. 768 (1961) 14, 15

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Constitutional Provisions

U.S. Const. art. III, § 2, cl. 1 12

United States Code

28 U.S.C. §1254(1) 1, 17, 18

Supreme Court Rules

Rule 10 ..... 8, 9, 11, 12
Rule 42 ..... 18, 19
Rule 43 ..... 18, 19

Federal Rules of Bankruptcy Procedure

Rule 9011(c) 21

OPINIONS AND ORDERS BELOW

April 6, 1999	Order denying Petition of Joanne Armstrong Allnutt for Rehearing and Rehearing en banc entered by United States Court of Appeals for the Fourth Circuit (Pet. App. 70-71).[1]
March 9, 1999	Order affirming decision of United States District Court for the District of Maryland, granting motion of Associates Leasing, Inc. for sanctions, granting motion of Associates Leasing, Inc. for extraordinary writ, and denying motion of Associates Leasing, Inc. for injunction entered by United States Court of Appeals for the Fourth Circuit (Pet. App. 1-3).

[1] References to Mulligan's Appendix will be referred to as "Pet. App. _____." References to the Trustee's Appendix will be referred to as "Resp. App. _____."

September 25, 1998	Memorandum and Order affirming March 20, 1998 and April 24, 1998 decisions of United States Bankruptcy Court for the District of Maryland, denying Joanne Armstrong Allnutt's motion for declaratory judgment and denying request of Associates Leasing, Inc. for additional sanctions relating to appeal entered by United States District Court for the District of Maryland (Pet. App. 4-8).
April 24, 1998	Order denying motion of Joanne Armstrong Allnutt to reconsider March 20, 1998 decisions entered by United States Bankruptcy Court for the District of Maryland.
March 20, 1998	Memorandum Opinion Imposing Sanctions Jointly Against Plaintiff and Plaintiff's Counsel in the Amount of $66,929.01 entered by United States Bankruptcy Court for the District of Maryland (Pet. App. 9-62) (reported at 220 B.R. 871 (Bankr. D. Md. 1998)).
March 20, 1998	Order Granting the Chapter 11 Trustee's Motion to Intervene, Denying Motions to Remand, Granting and Deferring Motions to Dismiss, and Imposing Sanctions Against Plaintiff and Plaintiff's Counsel entered by United States Bankruptcy Court for the District of Maryland (Pet. App. 63-65).

March 20, 1998	Order Entering Final Money Judgment in favor of Trustee and against Joanna Armstrong Allnutt and Tracy E. Mulligan in the amount of $24,450.50 entered by United States Bankruptcy Court for the District of Maryland.
March 20, 1998	Permanent Injunction against filing of lawsuits by Fred W. Allnutt, Sr., Joanne Armstrong Allnutt, and their insiders and agents, including Tracy E. Mulligan, contesting validity of sales of property of bankruptcy estate by Trustee entered by United States Bankruptcy Court for the District of Maryland (Pet. App. 66-68).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit (the "Fourth Circuit") was entered on March 9, 1999. The Fourth Circuit denied a petition for rehearing filed by Joanne Allnutt on April 6, 1999. On July 19, 1999, the instant Petition for Writ of Certiorari filed by Mulligan was docketed. In his Petition, Mulligan asserts this Court has jurisdiction over this matter under 28 U.S.C. § 1254(1), which allows this Court to exercise jurisdiction over a decision of a court of appeals upon the petition of a party to a case. Because Mulligan purports to be the petitioner, this Court has jurisdiction over this dispute only to the extent that Mulligan was a party in the Fourth Circuit case, i.e., this Court has jurisdiction only over the sanctions award.

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

All relevant constitutional provisions, statutes and rules are set forth in Resp. App. 1-7.

COUNTERSTATEMENT OF THE CASE AND FACTS

The instant Petition for Writ of Certiorari (the "Petition"), although brought by Mulligan, has the hands of Fred W. Allnutt, Sr. ("Fred Allnutt") all over it. Fred Allnutt is a debtor in a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"). In 1992, Respondent Mark J. Friedman was appointed the trustee for Fred Allnutt's bankruptcy estate (the "Trustee"). Simply stated, the Petition seeks review of the Bankruptcy Court's findings of fact and conclusions of law which culminated in an imposition of sanctions jointly and severally against Mulligan and Joanne Allnutt (the original plaintiff and Mulligan's client) for bringing what the Bankruptcy Court found to be a frivolous and bad faith lawsuit.

As determined by the Bankruptcy Court and elaborated on in the Bankruptcy Court's Memorandum

Opinion Imposing Sanctions Jointly Against Plaintiff and Plaintiff's Counsel (the "Bankruptcy Court Memorandum"), "[t]here is no doubt, based upon the record in this case, that the debtor [Fred Allnutt] is the sponsor of the instant lawsuit, as its true beneficiary and real party in interest." (Pet. App. 27). Here again, it is Fred Allnutt manipulating apparently his wife's former counsel, trying to use this purported appeal of the sanctions award as subterfuge to attempt to obtain review of the decisions below and to have the case reinstated in the state court.

Interestingly, Mulligan filed the Petition requesting review of the Bankruptcy Court's findings of fact, conclusions of law and imposition of sanctions imposed against him and Joanne Allnutt even though the sanctions

have already been satisfied by Joanne Allnutt. [2] Mulligan does not have the authority of Joanne Allnutt to petition this Court for review of the other issues raised in the Fourth Circuit case. As Mulligan admits, Joanne Allnutt instructed him not to appeal the Fourth Circuit's decision on her behalf. Nevertheless, the five issues identified in the Petition focus exclusively on the original plaintiff in this proceeding, Joanne Allnutt. Mulligan has no remaining personal interest at stake and therefore lacks standing to request review of the Fourth Circuit's decision. Furthermore, the issues asserted in the Petition are moot because the judgment appealed from has been satisfied. No case or controversy remains.

---

[2] The Trustee recorded the judgment of the Bankruptcy Court in the Circuit Court of Maryland for Worcester County, where Joanne Allnutt is the sole owner of certain real property. The Trustee initiated post-judgment collection proceedings, and in March 1999, Joanne Allnutt paid in full the judgment in favor of the Trustee. The Trustee has made no attempts to collect the judgment from Mulligan.

The relevant facts are set forth in the Bankruptcy Court Memorandum. It would be duplicative to restate the relevant facts here, but following is a brief procedural summary:

- On September 27, 1996, Joanne Allnutt commenced the instant proceeding in the Circuit Court of Maryland for Howard County (the "State Court") for the second time suing certain good faith purchasers of property of the Debtor's bankruptcy estate and their transferees for conversion and detinue. The defendants removed the proceeding to the Bankruptcy Court.

- The Bankruptcy Court concluded that the lawsuit was yet another frivolous and unfounded lawsuit unjustly initiated by the Debtor, through his wife, against good faith purchasers of property of the bankruptcy estate.

- The Bankruptcy Court determined that the Trustee was a necessary party to the proceeding and allowed the Trustee to intervene.

- The record before the Bankruptcy Court culminated in the Bankruptcy Court's Memorandum Opinion Imposing Sanctions Jointly Against Plaintiff and Plaintiff's

Counsel in the amount of $66,929.01 (Pet. App. 9-62) which demonstrates the basis for the sanctions entered against Joanne Allnutt and Mulligan and in favor of the Trustee (Pet. App. 63-65). The Bankruptcy Court entered final money judgments in favor of the defendants and against Joanne Allnutt and Mulligan, jointly and severally, in an amount equal to the sanctions imposed. In addition, in light of the continuing efforts of the Debtor and his proxies (including Joanne Allnutt and Mulligan) to undermine the administration of the bankruptcy case and the Trustee's confirmed Plan of Liquidation, the Bankruptcy Court, pursuant to 11 U.S.C. (the "Bankruptcy Code") §§105 and 363, entered an order which stated:

> the debtor, the plaintiff [Mrs. Allnutt], and their insiders and agents, including his, her, or their attorneys, ARE HEREBY PERMANENTLY ENJOINED from filing lawsuits in state and federal courts contesting the validity of sales of property of the bankruptcy estate by the Chapter 11 trustee, without leave of [the Bankruptcy Court] and subject to further severe sanctions. (Pet. App. 66-68).

- Both the District Court and the Fourth Circuit affirmed the order imposing sanctions, the

final money judgments and the permanent injunction entered by the Bankruptcy Court.

- After dismissal of the appeal to the Fourth Circuit, in March 1999, Joanne Allnutt satisfied the judgment in favor of the Trustee.

The Trustee adopts the findings of fact and statement of the case set forth in the Bankruptcy Court Memorandum. Clearly, the sanctions award and permanent injunction issued by the Bankruptcy Court were warranted, and there is no reasonable basis for a review of the Fourth Circuit decision.

Because it is clear that the instant proceeding is a part of a pattern of abusive tactics and harassment of the Trustee and innocent third parties and a bad faith continuing effort to frustrate the administration of the bankruptcy estate and challenge the sale of the Debtor's property, the Trustee requests that this Court award him damages and costs.

ARGUMENT

The instant Petition has the hands of Fred Allnutt on it. The Petition is nothing more than an attempt by Fred

Allnutt to have the Bankruptcy Court's findings of fact and conclusions of law reviewed again. The Petition must be denied on four grounds: (1) the Petition fails to set forth "compelling reasons" for review of the Fourth Circuit decision by this Court, (2) the sanctions award is moot because it has already been paid by Joanne Allnutt, (3) Mulligan does not have standing to petition this Court for review because he has no personal interest at stake, and (4) Mulligan does not have standing to assert claims on behalf of Joanne Allnutt, who has undisputedly advised him not to proceed on her behalf. For these reasons, each of which is addressed below, the Petition must be denied.

I. The Petition for Writ of Certiorari Does Not Set Forth "Compelling Reasons" to Warrant Issuance of a Writ of Certiorari.

The Petition fails to set forth "compelling reasons" for review by this Court. Supreme Court Rule 10 defines "compelling reasons" as the following:

(i) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;

(ii) A United States court of appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort;

(iii) A United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(iv) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals; and

(v) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10. Review on a writ of certiorari is within the sole discretion of the Court. Id.

The questions presented by the Petition clearly do not fall within any of the "compelling reasons" enunciated by this Court. Instead, the Petition asserts that the Fourth Circuit erred in affirming the Bankruptcy Court Orders and, more specifically, asserts that the following findings of fact and conclusions of law are erroneous:

- The Bankruptcy Court's conclusion of law that the subject property was not owned as tenants by the entireties by the Debtor and Joanne Allnutt and that Joanne Allnutt had no interest the subject property. (See Questions Presented #1 and #2.)

- The Bankruptcy Court's conclusion of law that removal of the State Court proceeding was warranted and that remand must be denied because the State Court did not have subject matter jurisdiction to set aside the Bankruptcy Court-approved sale of the bankruptcy estate's assets. (See Question Presented #3.)

- The Bankruptcy Court's conclusion of law that it had subject matter jurisdiction over the proceeding because its outcome could substantially impact the administration of the Debtor's bankruptcy estate. (See Question Presented #4.)

- The Bankruptcy Court's conclusion of law that the Debtor's wife is an "insider" and an agent for the Debtor. (See Question Presented #5.)

All of the Questions Presented in the Petition allege erroneous findings of fact and misapplications of the law. However, such grounds for review are specifically excluded from appropriate grounds for relief. See Sup. Ct. R. 10 ("[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"). See also Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949) ("A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do

not grant a certiorari to review evidence and discuss specific facts.").

There is nothing novel about the Petition except the persistence of Fred Allnutt in seeking time and time again to (i) abuse and manipulate the courts, (ii) seek review of matters already decided and (iii) use proxies to promote his own agenda. The failure to set forth "compelling reasons" for review, as described in Supreme Court Rule 10, alone warrants denial of the Petition.

II. The Sanctions Award is Moot Because It Has Been Satisfied.

The sanctions award has been satisfied and there remains no case or controversy to be decided by this Court. Therefore, the issue whether the sanctions award was proper is moot.

It is well-established that a court may not consider an issue raised by a party unless a "case" or "controversy" is present and the party has a personal stake at interest. See

generally U.S. Const. art. III, § 2, cl. 1. Furthermore, "[t]his case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate. . . . The parties must continue to have a 'personal stake in the outcome' of the lawsuit." Spencer v. Kemna, 523 U.S. 1, ____, 118 S. Ct. 978, 983 (1998) (citations omitted). "This means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" Id. (citation omitted). See also Sosna v. Iowa, 419 U.S. 393 (1975) ("the general principles of Art. III jurisdiction require that the plaintiff's personal stake in the litigation continue throughout the entirety of the litigation").

Mulligan clearly has no personal stake in this case. The sanctions award – the only relief granted against him below – has been paid in full. There is no case or controversy remaining as to Mulligan. Therefore, the

Petition is moot. See, e.g., Verret v. Oil Transport Co., 365 U.S. 768 (1961) (remanding case to court of appeals to dismiss appeal as moot where judgment entered by district court had been satisfied).

As recently stated by this Court:

> [M]ootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so. We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong. . . . We are confident that, as a general matter, district courts will prevent dilatory tactics by the litigants and will not unduly delay their own rulings; and that, where appropriate, corrective mandamus will issue from the courts of appeals.

Spencer v. Kemna, 523 U.S. 1, ____, 118 S. Ct. 978, 988 (1998). Because the Petition is moot, there is nothing for this Court to review. Therefore, the Petition should be denied.

III. Mulligan Does Not Have Standing to Petition This Court for Review.

A. Mulligan Does Not Have Standing to Petition This Court for Review of an Award of Sanctions that Has Already Been Paid by Joanne Allnutt.

Mulligan has no standing to petition this Court for review of the sanctions award because the sanctions have been paid by Joanne Allnutt. As discussed above, Mulligan's only interest in this lawsuit in the courts below is as a co-debtor on the sanctions award. However, because the sanctions were paid by Joanne Allnutt, Mulligan no longer has a stake in the lawsuit. There is therefore no matter regarding Mulligan for this Court to review. See, e.g., Verret v. Oil Transport Co., 365 U.S. 768 (1961) (remanding case to court of appeals to dismiss appeal as moot where judgment entered by district court had been satisfied).

B. Mulligan Does Not Have Standing to Assert Claims on Behalf of Joanne Allnutt Because She Undisputedly Advised Him Not to Petition This Court for Review.

The Petition seeks review of the Fourth Circuit judgment with respect to claims of Joanne Allnutt. However, Mulligan petitions this Court for review on behalf of Joanne Allnutt without her authority or permission. The Petition, in pertinent part, states "This petition is being filed by counsel for plaintiff below . . . The plaintiff . . . has instructed me not to proceed on her behalf." (Pet. 2). Without Joanne Allnutt's authority to petition this Court for relief, review of the Fourth Circuit judgment must be denied to the extent it purports to asserts claims on behalf of Joanne Allnutt.[3] See, e.g., Trans

[3] The Trustee notes that filing the Petition on behalf of Joanne Allnutt without her authority is also a clear violation of Model Rule of Professional Conduct 1.2(a), which states "[a] lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued."

World Airlines, Inc. v. Thurston, 469 U.S. 111, 119 n.14 (1985) (concluding that Court did not have jurisdiction to consider question asserted by one party on behalf of another); Kapco Mfg. Co., Inc. v. C&O Enter., Inc., 886 F.2d 1485, 1494 (7th Cir. 1989) (concluding that attorney against whom sanctions had been imposed did not have standing to appeal substantive issues which his client had chosen not to appeal).

Furthermore, Mulligan was a "party" in the Fourth Circuit case only to the extent of the sanctions award. Therefore, he may not request that this Court invoke jurisdiction over any other matter pursuant to Section 1254(1) of Title 28 of the United States Code.[4] Section 1254(1)

[4] Although the caption on the cover page identifies Joanne Armstrong Allnutt as the petitioner, the opening paragraph of the Petition identifies Tracy E. Mulligan as the petitioner. See Pet. p.1 ("Tracy E. Mulligan, Esquire, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.").

provides that a case in a court of appeals may be reviewed by this Court by "writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." Mulligan may seek review of the Fourth Circuit's decision only with respect to the sanctions award and, as discussed above, the sanctions issue is moot.

IV. The Petition is Frivolous and Wholly Without Merit and Therefore Damages and Costs Should be Awarded to the Trustee.

The Petition is frivolous and wholly without merit. The Trustee is therefore entitled to recover damages and single or double his costs incurred in connection with opposing the Petition. Supreme Court Rule 42 states "[w]hen a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43." The Trustee submits damages and

costs under Supreme Court Rules 42 and 43 are appropriate and justified.

The frivolous and "bad faith" nature of Mulligan's conduct is abundantly amplified by the record.[5] The Bankruptcy Court Memorandum in elaborate detail sets forth a description of Joanne Allnutt's and Mulligan's frivolous conduct. Just some of the elements relied upon by the Bankruptcy Court Memorandum are:

(i) Joanne Allnutt and Mulligan, especially in light of a prior State Court action which involved a challenge to the Trustee's sale of "race car assets" and was removed to the Bankruptcy Court, were aware that they could not prevail in the Bankruptcy Court on a "tenancy by the entireties" theory and yet again sought to initiate a challenge to a Trustee sale of property of the bankruptcy estate in a State Court that had no prior experience or background with the bankruptcy case.

---

[5] The Bankruptcy Court Memorandum describes the "seemingly endless litigation in the state and federal courts over the past 14 years" initiated by Fred Allnutt and his proxies. (Pet. App. 11 fn.1; Pet. App. 23 fn.9, fn.10).

(ii) Joanne Allnutt's Complaint exhibited "a blatant disregard for the jurisdiction and authority of the federal courts."

(iii) This was the second frivolous lawsuit brought by Joanne Allnutt and Mulligan in which innocent parties were "haled into court to respond to groundless claims."

(iv) After removal to the Bankruptcy Court, Joanne Allnutt and Mulligan continued to insist the Adversary Proceeding was justified.

(v) Joanne Allnutt and Mulligan could not have had a reasonable basis for believing the adversary proceeding was justified or presented any questions of fact.

The Bankruptcy Court Memorandum summarized the basis for imposition of sanctions as follows:

> The instant complaint was filed in the state court in bad faith and without substantial justification, for the improper purposes of unreasonably [sic] delaying the administration of the Chapter 11 case, to frustrate the jurisdiction of the bankruptcy court by preventing the orderly liquidation of the debtor's estate, overturn decisions of the U.S. bankruptcy court and the U.S. district court, and harass and damage innocent parties whose only offense was to purchase estate assets from the trustee.

(Pet. App. 54). The Bankruptcy Court Memorandum elaborates upon its basis for the imposition of sanctions against Mulligan and cites to his various pleadings filed in the Bankruptcy Court without legal justification and his departure from "an objective standard of reasonableness." (Pet. App. 55-56). The Bankruptcy Court Memorandum determined that Mulligan was a willing participant in litigation clearly motivated by malice and "bad faith."

The Bankruptcy Court found Joanne Allnutt's and Mulligan's conduct so egregious that, in addition to the sanctions imposed pursuant to Federal Rule of Bankruptcy Procedure 9011(c), the Bankruptcy Court permanently enjoined Joanne Allnutt, the Debtor and their insiders and agents, including Mulligan, from filing similar lawsuits. (Pet. App. 66-67). The injunction's stated purpose is "to enforce [the] Court's valid orders against the fraudulent and vexatious attacks by the debtor [Fred Allnutt], the plaintiff

[Joanne Allnutt] and their counsel [Mulligan]." (Pet. App. 66-68). The Bankruptcy Court, recognizing that the injunction was extreme, found it necessary to "protect and maintain the authority and dignity of the court." For the reasons stated in the Bankruptcy Court Memorandum, this Brief, and the entire proceedings of the bankruptcy case, damages and costs incurred in relation to this Opposition should be awarded to the Trustee.

CONCLUSION

Although this lawsuit was originally brought by Joanne Allnutt, it was clearly sponsored by Fred Allnutt. Similarly, the instant Petition, although purportedly brought by Mulligan, has the hands of Fred Allnutt on it. It is telling that the Petition seeks review of the underlying claims initially addressed by the Bankruptcy Court. The Petition directly attacks the Bankruptcy Court's findings of fact and

conclusions of law and fails to set forth "compelling reasons" for review.

Furthermore, there is no case or controversy remaining and the issues on appeal are moot. The sanctions imposed by the Bankruptcy Court were paid by Joanne Allnutt; Mulligan has no remaining personal interest at stake.

In addition, Mulligan lacks standing to request review of any issues other than that of the sanctions award because he was not a "party" to the Fourth Circuit case with regard to any other issues. Mulligan also does not have standing to assert claims on behalf of Joanne Allnutt who undeniably expressed that she did not want to pursue an appeal of the Fourth Circuit decision. The Trustee respectfully submits that, under these circumstances, an award of damages and costs against Mulligan is justified.

WHEREFORE, for the reasons set forth herein, the record of the Fourth Circuit, the record of the District Court,

the Bankruptcy Court Memorandum and the record of the Bankruptcy Court, the Chapter 11 Trustee requests this Court enter an order denying the Petition for Writ of Certiorari and imposing upon Mulligan an obligation to pay additional sanctions to the Trustee in an amount equal to the costs of all legal fees and expenses incurred in connection with this Opposition.

Date: August 17, 1999

Of Counsel:

Mark J. Friedman
Maria Ellena Chavez-Ruark
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530

Counsel of Record:

William Roger Truitt
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530
Counsel for Respondent
Mark J. Friedman

APPENDIX

United States Constitution Article III, § 2, cl. 1

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Supreme Court Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court' supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Supreme Court Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Supreme Court Rule 43. Costs

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U.S.C. § 2412, costs under this Rule are allowed for or against the United Sates or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Bankruptcy Rule 9011(c)

Sanctions. If, after notice and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion for reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

3. Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

CERTIFICATE OF SERVICE

I, William Roger Truitt, a member of the Bar of this Court, hereby certify that on this 17th day of August, 1999 three (3) copies of the foregoing Brief of Respondent Mark J. Friedman, Chapter 11 Trustee, in Opposition to Petition for Writ of Certiorari were mailed, first class postage prepaid to the following:

Jeffrey L. Friedman, Esquire
100 Owings Court, Suite 13
Reisterstown, Maryland 21136

Steven Leitess, Esquire
201 Pomona Square
1700 Reisterstown Road
Baltimore, Maryland 21208

F. Thomas Rafferty, Esquire
1200 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Elwood Swam, Esquire
P.O. Box 176
Hampstead, Maryland 21076

Tracy E. Mulligan, Esquire
416 Hungerford Drive, Suite 215
Rockville, Maryland 20850

Office of the U.S. Trustee
300 West Pratt Street
Baltimore, Maryland 21201

I further certify that all parties required to be served have been served.

Of Counsel:

Mark J. Friedman
Maria Ellena Chavez-Ruark
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530

Counsel of Record:

William Roger Truitt
Piper & Marbury L.L.P.
Charles Center South
36 South Charles Street
Baltimore, MD 21201
(410) 539-2530
Counsel for Respondent
Mark J. Friedman